

Chapter DFI-Bkg 11

PROCEDURE BEFORE THE ADMINISTRATOR OF THE DIVISION OF BANKING

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Note: Chapter Bkg 11 was renumbered Chapter DFI-Bkg 11 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498, eff. 7-1-97.

DFI-Bkg 11.01 Application of rules. These rules shall apply in all proceedings and hearings had before the administrator of the division of banking in matters within his or her jurisdiction and shall apply except in cases where inconsistent with the procedure provided by statute in particular instances. "Commissioner" as used herein, refers to the commissioner of banking of Wisconsin.

Note: 1995 Wis. Act 27 replaced the commissioner of banking with the division of banking in the department of financial institutions.

History: 1-2-56; am. Register, July, 1968, No. 151, eff. 8-1-68; correction made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432.

DFI-Bkg 11.02 Place of hearings. Unless otherwise specifically provided by law or ordered by the administrator of the division of banking, all hearings shall be held at the office of the Administrator of the Division of Banking of Wisconsin, Madison, Wisconsin, 53702.

History: 1-2-56; am. Register, July, 1968, No. 151, eff. 8-1-68.

DFI-Bkg 11.03 Conduct of hearings. All hearings shall be conducted and presided over by the administrator of the division of banking or such subordinate as may be designated to hear the matter.

History: 1-2-56; am. Register, July, 1968, No. 151, eff. 8-1-68.

DFI-Bkg 11.04 Hearings public. All hearings shall be open to the public except where otherwise specifically provided by statute or ordered by the administrator of the division of banking or the subordinate having charge of the matter involved in said hearing.

DFI-Bkg 11.05 Subpoenas. The administrator of the division of banking may issue subpoenas for the attendance of a party or any witness at a hearing, whether the administrator of the division of banking is to conduct the hearing or not. Subpoenas may be in the form provided by s. 885.02, Stats.

History: 1-2-56; am. Register, July, 1983, No. 331, eff. 8-1-83.

DFI-Bkg 11.06 Record. (1) A transcript shall be prepared of the proceedings at a hearing in any contested case as defined by s. 227.01, Stats., or in any proceeding at the direction of the administrator of the division of banking or on the request of any party establishing a reasonable need therefor. The transcript together with all exhibits shall be a part of the official record of the proceedings.

(2) Any person desiring a copy of the transcript shall so indicate at the commencement of the proceedings. The cost of each copy shall be paid by the person requesting it. A charge of 75¢ for each 8½ by 11 inch page will be charged for copies prepared by the office of administrator of the division of banking. However, if the administrator of the division of banking determines that any party is impecunious or would suffer an undue economic hardship, such party shall be provided a copy of the transcript without

charge. Where a transcript of proceedings, other than a contested case, is prepared at the request of any party, such party shall also pay all recording and transcription costs.

History: 1-2-56; r. and recr. Register, May, 1977, No. 257, eff. 6-1-77.

DFI-Bkg 11.07 Evidence. The administrator of the division of banking shall not be bound by common law or statutory rules of evidence. All testimony having reasonable probative value shall be admitted, but immaterial, irrelevant or unduly repetitious testimony shall be excluded. The rules of privilege recognized by law shall be given effect. Basic principles of relevancy, materiality and probative force, as recognized in equitable proceedings, shall govern the proof of all questions of fact.

DFI-Bkg 11.08 Form and style of papers. All papers filed in connection with any hearing shall be either printed or type-written and, as far as practicable, shall be on paper 8 ½ inches wide and 11 inches long. An original and 2 copies thereof shall be filed with the administrator of the division of banking and copies thereof shall also be served or furnished, as the case may be, to any other party or person interested who enters an appearance in said proceeding. Pleadings shall bear the name and mailing address of the party or a representative presenting the same. All pleadings, notices and other papers shall be captioned "BEFORE THE ADMINISTRATOR OF THE DIVISION OF BANKING OF WISCONSIN."

History: 1-2-56; am. Register, July, 1968, No. 151, eff. 8-1-68; correction made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432.

DFI-Bkg 11.09 Service and filing of papers. Unless otherwise provided by law, all orders, notices and other papers may be served by the administrator of the division of banking by first class or registered mail addressed to any party at the last known post office address or to the party's attorney of record. Papers required to be filed with the administrator of the division of banking may be mailed to the following address: Office of the Administrator of the Division of Banking, P.O. Box 7876, Madison, Wisconsin, 53707.

History: 1-2-56; am. Register, July, 1968, No. 151, eff. 8-1-68; am. Register, July, 1983, No. 331, eff. 8-1-83.

DFI-Bkg 11.10 Notice of hearing in contested cases. In all proceedings instituted by the administrator of the division of banking on complaint or otherwise for the revocation or suspension of any license or permit or in any other contested matter the notice of hearing shall contain a statement of the issues involved and may be in substantially the following form:

BEFORE THE ADMINISTRATOR OF THE DIVISION OF
BANKING OF WISCONSIN

To _____ (Name)
_____ (Street Address)
_____ (City and State)
Respondent

Take Notice that a hearing will be held on the _____ day of _____ at the office of the Administrator of the Division of Banking of Wis-

consin in Madison, Wisconsin, (or such other place as may be designated) at _____ o'clock M., in the matter of (here insert briefly the subject matter of the hearing). The issue involved and the matters there to be considered are: (here insert with reasonable particularity in numbered paragraphs the particular matters and things complained of or at issue with respect to the subject matter of the hearing), to which you are required to make answer in writing at least _____ days before the time set for hearing.

Dated at Madison, Wisconsin, this _____ day of _____.

ADMINISTRATOR OF THE DIVISION OF BANKING OF
WISCONSIN

By _____

History: 1-2-56; am. Register, July, 1968, No. 151, eff. 8-1-68.

DFI-Bkg 11.11 Answer in contested cases. (1) The respondent shall be required to make answer to any such notice in a contested case within the time therein specified and failure to do so shall constitute a default, but such default may be excused upon proper showing upon such terms as may be deemed to be just. The answer of the respondent shall be verified unless an admission of the allegations might subject the respondent to prosecution for a felony. Such answer must contain:

- (a) A specific denial of each of the material allegations of the charges which are controverted by the respondent;
- (b) A statement of any new matter constituting a defense or affecting the respondent's situation which respondent wishes to have considered.

DFI-Bkg 11.12 Admission by not denying. Every material allegation of the charges not controverted in the answer shall be taken as true, but new matter in the answer shall be deemed controverted without any reply being served or filed.

DFI-Bkg 11.13 Petition for rules. (1) Any interested person may petition the administrator of the division of banking requesting the promulgation or amendment or repeal of any rule, the making of which is within the jurisdiction of the administrator of the division of banking. Every such petition shall specify in detail the particulars in which any rule presently existing is desired to be amended, shall specify with particularity any rule which it is desired should be repealed, and in the event the petition is for the promulgation of any rule, such petition shall set out the proposed rule in full.

(2) Upon the receipt of any such petition the administrator of the division of banking may make such investigation as he or she

desires into the matter, hold any conferences or hearings deemed necessary and may give notice of such hearings to all parties which he or she deems may be interested in said matter. But the administrator of the division of banking may dispose of any such petition in a summary manner if he or she so desires.

History: 1-2-56; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432.

DFI-Bkg 11.14 Declaratory rulings. Any person in interest may petition the administrator of the division of banking for a declaratory ruling with respect to the applicability to any persons, property or state of facts in which such person has an interest, of any rule or statute enforced by the administrator of the division of banking. Any such petition shall be verified by the party presenting the same, and upon receipt of such petition the administrator of the division of banking may make such investigation of the facts set forth in such petition as he or she deems desirable, and may hold such hearings upon notice to such petitioner or any other interested party as he or she may deem necessary or desirable. The administrator of the division of banking, however, shall not be required to issue any such declaratory ruling and such action shall be discretionary except upon reference of a case in accordance with the provisions of s. 227.41, Stats.

History: 1-2-56; corrections made under s. 13.93 (2m) (b) 5. and 7., Stats., Register, December, 1991, No. 432.

DFI-Bkg 11.15 Prehearing conference. (1) In any matter pending before him or her the administrator of the division of banking may direct any party or attorney for any party to appear before the administrator of the division of banking or subordinate who has the matter in charge to consider:

- (a) Simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining admissions of fact or as to documents which will avoid unnecessary proof;
- (d) Such other matters as may aid in the disposition of the matter.

(2) The administrator of the division of banking or subordinate having the matter in charge may make an order reciting the action taken at the prehearing conference, the amendments made to pleadings and the agreements made as to any of the matters considered, and limiting the issues to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceedings unless modified at the hearing to prevent manifest injustice.

History: 1-2-56; correction in (1) (intro.) made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432.